



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

KUTT et al.

Serial No.: 10/806,886

Filed: March 22, 2004

Atty. File No.: 4239-3-1-1

For: "METHOD AND SYSTEM FOR  
REDUCING BODY WEIGHT IN AN  
ENCLOSED ATMOSPHERIC  
ENVIRONMENT"

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

Dear Sir:

Pursuant to the MPEP 2001.06(c), Applicants hereby disclose information from related litigation. One of the Applicants, Mr. Lawrence Kutt, and the Assignee, Colorado Altitude Training LLC, are currently involved in litigation in the United States District Court for the Southern District of New York, Civil Action No. 02-CV-6191. This litigation relates to patent infringement and involves allegations of non-infringement, invalidity and unenforceability.

Enclosed herewith is a copy of the present pleadings in the New York action (Exhibit A). Upon the Examiner's request, Applicants' counsel can obtain further information with respect to the litigation, including copies of any of the pleadings.

Mr. Neal S. Cohen of Faegre & Benson LLP, phone number (303) 447-7700, is representing Mr. Kutt and Colorado Altitude Training LLC with respect to this litigation..

) Group Art Unit: 1724  
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)  
) Examiner: LAWRENCE Jr., Frank M.  
)  
)  
) PROVIDING INFORMATION FROM  
)  
) RELATED LITIGATION  
)  
) UNDER MPEP § 2001.06(C)  
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TYPED OR PRINTED NAME: Brenda Carpenter

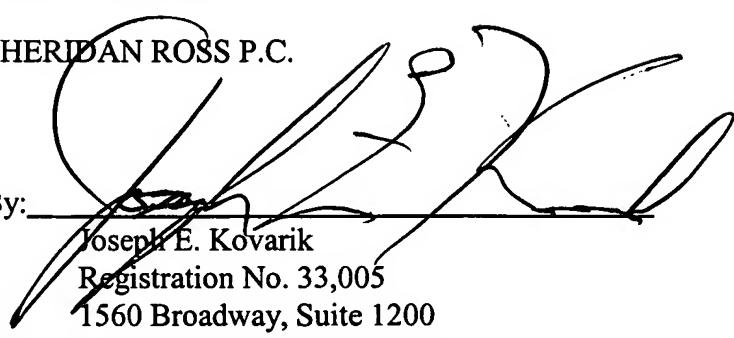
SIGNATURE: Brenda Carpenter

It is respectfully requested that the Examiner review the enclosed information and acknowledge receipt of the same.

Respectfully submitted,

SHERIDAN ROSS P.C.

By:

  
Joseph E. Kovarik  
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1560 Broadway, Suite 1200  
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Date: 9/7/05

J:\4239\3\1\1\PTO\info re litigation.frm



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

)  
HYPOXICO, INC., )  
)  
Plaintiff, Counterclaim- )  
Defendant, )  
)  
vs. )  
)  
CIVIL ACTION NO. 02 Civ. 6191 (JGK)  
COLORADO ALTITUDE TRAINING )  
LLC and LAWRENCE KUTT, )  
)  
Defendants/Counterclaim- )  
Plaintiffs/Third Party )  
Plaintiffs, )  
)  
vs. )  
)  
IGOR K. KOTLIAR, )  
)  
Third Party Defendant. )  
\_\_\_\_\_  
)

**PLEADINGS INDEX**

| NO. | PARTY    | DESCRIPTION   | DATE     |
|-----|----------|---|----------|
| 1.  | Hypoxico | Complaint Patent Infringement   | 08/02/02 |
| 2.  | Court    | Individual Practices of Judge John G. Koeltl  | 08/27/02 |
| 3.  | CAT/Kutt | Motion for 30-day Extension of time to Answer or Otherwise Plead  | 08/27/02 |
| 4.  | Court    | Order granting 30-day extension of time to answer to 9/26/02  | 08/27/02 |
| 5.  | CAT/Kutt | Motion to Dismiss or, in the Alternative, to Transfer Venue   | 09/25/02 |
| 6.  | CAT/Kutt | Declaration of Lawrence M. Kutt in Support of Motion to Dismiss or, in the Alternative, to Transfer Venue | 09/25/02 |
| 7.  | Hypoxico | Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss or, in the Alternative, to Transfer | 11/11/02 |
| 8.  | CAT/Kutt | Reply in Further Support of Defendants' Motion to Dismiss or, in the Alternative, to Transfer             | 11/25/02 |

| NO. | PARTY    | DESCRIPTION   | DATE     |
|-----|----------|---|----------|
| 9.  | CAT/Kutt | Letter to Court to Reschedule Hearing on Motion to Dismiss  | 03/05/03 |
| 10. | CAT/Kutt | Motion <i>Pro Hac Vice</i> for Admission of Robert R. Brunelli, Esq.  | 03/11/03 |
| 11. | Court    | Order Granting Admission of Robert R. Brunelli, Esq. <i>Pro Hac Vice</i>  | 03/12/03 |
| 12. | Court    | Scheduling Order  | 04/08/03 |
| 13. | CAT/Kutt | Submission re Attendance at Settlement Conference   | 04/17/03 |
| 14. | CAT/Kutt | Confidential Settlement Statement material for use at Settlement Conference   | 04/21/03 |
| 15. | Hypoxico | Letter confirming 6/17/03 oral argument   | 05/29/03 |
| 16. | Court    | Opinion and Order – denying motion to dismiss or change venue   | 12/10/03 |
| 17. | CAT/Kutt | Answer, Affirmative Defenses and Counterclaims and Third Party Complaint (Trial by Jury Demanded)                   | 12/17/03 |
| 18. | Hypoxico | Amended Complaint   | 12/22/03 |
| 19. | CAT/Kutt | Answer to Amended Complaint, Affirmative Defenses, Counterclaims and Third Party Complaint (Trial by Jury Demanded) | 01/12/04 |
| 20. | CAT/Kutt | Disclosure of Interested Parties Pursuant to Fed.R.Civ.P. Rule 7.1(a)   | 01/12/04 |

**SEE VOLUME 2**

|     |          |  |          |
|-----|----------|--|----------|
| 21. | Hypoxico | Reply to Counterclaims; Answer to Third Party Complaint; and Hypoxico's Counterclaim | 02/06/04 |
| 22. | CAT      | Colorado Altitude Training, LLC's Reply to Plaintiff Hypoxico, Inc.'s Counterclaim   | 02/12/04 |
| 23. | CAT/Kutt | Notice of Change of Address  | 03/02/04 |
| 24. | CAT/Kutt | Letter to Judge Koeltl requesting referral to Magistrate for Settlement Conference   | 03/03/04 |
| 25. | Court    | Order of Reference to Magistrate Judge   | 03/05/04 |
| 26. | CAT/Kutt | Letter to Judge Koeltl requesting referral to Magistrate                             | 03/16/04 |
| 27. | Court    | Letter confirming settlement conference – 4/7/04                                     | 03/17/04 |
| 28. | Court    | Letter rescheduling settlement conference – 4/6/04                                   | 03/29/04 |
| 29. | CAT/Kutt | Letter to Mag. Maas re rescheduling of settlement conference                         | 03/29/04 |

| NO. | PARTY    | DESCRIPTION   | DATE     |
|-----|----------|---|----------|
| 30. | Court    | Acknowledgement of Settlement Conference  | 03/29/04 |
| 31. | CAT/Kutt | Letter to Mag. Maas re confidential settlement statement  | 04/01/04 |
| 32. | Joint    | Joint Motion to Reset Pretrial Deadlines  | 04/22/04 |
| 33. | CAT/Kutt | Proposed Stipulated Protective Order  | 08/16/04 |
| 34. | Joint    | Joint Motion to Reset Pretrial Deadlines  | 08/18/04 |
| 35. | Joint    | Proposed Stipulated Protective Order  | 08/18/04 |
| 36. | Court    | Stipulated Protective Order   | 08/19/04 |
| 37. | Court    | Order Resetting Pretrial Deadlines  | 08/19/04 |
| 38. | CAT      | Notice of Motion for (1) Leave to Amend Affirmative Defenses and Counterclaims to More Fully Assert unenforceability of Hypoxico's '222 and '652 Patents; and (2) Declaration of Right to Proceed with Claim of Infringement of U.S. Patent No. 5,860,857 Solely in CAT's Name or, in the Alternative, for an Order Joining AGA and/or Kihu as a Party to this Action           | 10/21/04 |
| 39. | CAT      | Motion for (1) Leave to Amend Affirmative Defenses and Counterclaims to More Fully Assert unenforceability of Hypoxico's '222 and '652 Patents; and (2) Declaration of Right to Proceed with Claim of Infringement of U.S. Patent No. 5,860,857 Solely in CAT's Name or, in the Alternative, for an Order Joining AGA and/or Kihu as a Party to this Action                     | 10/21/04 |
| 40. | CAT      | Brief in Support of Motion for (1) Leave to Amend Affirmative Defenses and Counterclaims to More Fully Assert unenforceability of Hypoxico's '222 and '652 Patents; and (2) Declaration of Right to Proceed with Claim of Infringement of U.S. Patent No. 5,860,857 Solely in CAT's Name or, in the Alternative, for an Order Joining AGA and/or Kihu as a Party to this Action | 10/21/04 |

| NO.                 | PARTY    | DESCRIPTION   | DATE     |
|---------------------|----------|---|----------|
| 41.                 | CAT      | Declaration of Robert R. Brunelli in Support of Motion for (1) Leave to Amend Affirmative Defenses and Counterclaims to More Fully Assert unenforceability of Hypoxico's '222 and '652 Patents; and (2) Declaration of Right to Proceed with Claim of Infringement of U.S. Patent No. 5,860,857 Solely in CAT's Name or, in the Alternative, for an Order Joining AGA and/or Kihu as a Party to this Action | 10/21/04 |
| 42.                 | Joint    | Stipulation to Permit Filing of A Second Amended Complaint  | 10/25/04 |
| 43.                 | Hypoxico | Second Amended Complaint  | 10/25/04 |
| 44.                 | Court    | Docket Entry - Answer to Amended Complaint due 11/8/04  | 10/27/04 |
| 45.                 | CAT/Kutt | Answer to Second Amended Complaint, Affirmative Defenses, and CAT's Counterclaims and Third Party Complaint (Trial By Jury Demanded)  | 11/01/04 |
| <b>SEE VOLUME 3</b> |          |   |          |
| 46.                 | CAT      | Notice of Withdrawal of Motion to Amend Colorado Altitude Training, LLC's Affirmative Defenses and Counterclaims on Issues of Unenforceability  | 11/01/04 |
| 47.                 | Hypoxico | Hypoxico's and Kotliar's Memorandum in Opposition to CAT's Motion for Declaration of Right to Proceed Alone   | 11/08/04 |
| 48.                 | CAT      | Defendant/Counter-Plaintiff Colorado Altitude Training, LLC's Reply in Support of Motion for Declaration of Right to Proceed Alone and Request for Oral Argument  | 11/12/04 |
| 49.                 | CAT      | Notice of Motion to Supplement the Record Supporting CAT's Motion to Proceed in its Own Name for Infringement   | 12/21/04 |
| 50.                 | CAT      | Motion to Supplement the Record Supporting CAT's Motion to Proceed in its Own Name for Infringement   | 12/21/04 |
| 51.                 | Hypoxico | Hypoxico's Reply to CAT's Counterclaims; Kotliar's Answer to CAT's Third Party Complaint; and Hypoxico's and Kotliar's Counterclaim   | 01/07/05 |
| 52.                 | CAT/Kutt | Entry of Appearance of Counsel for Defendants/ Counterclaim Plaintiffs/Third Party Plaintiffs   | 02/14/05 |
| 53.                 | CAT/Kutt | Notice of Motion for Leave to Withdraw as Attorneys of Record for Defendants/Third Party Plaintiffs Colorado Altitude Training LLC and Lawrence Kutt  | 02/14/05 |

| NO.                 | PARTY    | DESCRIPTION   | DATE     |
|---------------------|----------|---|----------|
| 54.                 | CAT/Kutt | Memorandum of Law in Support of Motion for Leave to Withdraw as Attorneys of Record for Defendants/Third Party Plaintiffs Colorado Altitude Training LLC and Lawrence Kutt                              | 02/14/05 |
| 55.                 | CAT/Kutt | Declaration of Robert R. Brunelli   | 02/14/05 |
| 56.                 | CAT/Kutt | Notice of Motion and Affidavit of John Nonna for admission <i>pro hac vice</i> of Neal Cohen  | 02/18/05 |
| 57.                 | CAT/Kutt | Notice of Motion and Affidavit of John Nonna for admission <i>pro hac vice</i> of Jared Briant  | 02/18/05 |
| 58.                 | CAT/Kutt | Reply to Hypoxico's and Kotliar's Counterclaim  | 04/06/05 |
| 59.                 | CAT/Kutt | Letter to Judge Koeltl re depositions   | 05/17/05 |
| 60.                 | CAT/Kutt | Letter to Judge Koeltl re pretrial proceedings  | 05/17/05 |
| 61.                 | Court    | Order Granting Withdrawal of Sheridan Ross P.C. and Vaslas, Lepowsky, Hauss & Danke, LLP as Attorneys of Record for Defendants/Third Party Plaintiffs Colorado Altitude Training, LLC and Lawrence Kutt | 05/18/05 |
| 62.                 | Court    | Order granting admission of Neal Cohen <i>pro hac vice</i>  | 05/18/05 |
| 63.                 | Court    | Order granting admission of Jared Briant <i>pro hac vice</i>  | 05/18/05 |
| 64.                 | Hypoxico | Letter to Judge Koeltl requesting waiver of protections requested by CAT  | 05/19/05 |
| 65.                 | Court    | Order scheduling argument – 6/8/05  | 05/23/05 |
| 66.                 | Hypoxico | Letter to Judge Koeltl re agreement to be bound   | 06/09/05 |
| 67.                 | CAT/Kutt | Letter to Judge Koeltl enclosing agreement to be bound  | 06/09/05 |
| 68.                 | CAT/Kutt | Letter to Judge Koeltl clarifying Hypoxico's letter of 6/9/05   | 06/10/05 |
| 69.                 | Hypoxico | Letter to Judge Koeltl responding to CAT's letter of 6/10/05  | 06/13/05 |
| 70.                 | Court    | Opinion and Order   | 06/13/05 |
| <b>SEE VOLUME 4</b> |          |   |          |
| 71.                 | CAT/Kutt | Letter to Judge Koeltl re Opinion and Order   | 07/05/05 |
| 72.                 | Court    | Order staying case until 10/7/05  | 07/05/05 |